3848.

SUPREME COURT OF THE UNITED STATES.

No. 119.

WILLIAM ROBERTSON, TRUSTEE, &c., PLAINTIFF IN ERROR,

vs.

HENRY R. COULTER AND JAMES RICHARDS, EX'ORS OF JOHN COLLINS, DECEASED.

IN ERROR TO THE HIGH COURT OF ERRORS AND APPEALS, OF THE STATE OF MISSISSIPPI.

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GIDEON, Print.

3849.

Pleas held at a term of the high court of errors and appeals, of the State of Mississippi, begun and held in pursuance of law at the court room in the capitol, in the city of Jackson, in said State, on the third Monday of April, being the 19th day of said month, in the year of our Lord one thousand eight hundred and fifty-two, before the honorable Cotesworth Pinckney Smith, presiding judge, and the honorable Ephraim S. Fisher, and the honorable William Yerger, associate judges of said court; Caswell R. Clifton, clerk of said court, being present, and John P. Oldham, sheriff of the county of Hinds, by his deputies, C. R. Dickson and John L. Hart, being in attendance thereon.

Be it remembered, that heretofore, to wit, on the 2d day of August, in the year of our Lord one thousand eight hundred and fifty, Coulter & Richards, plaintiffs in error in this cause, filed in the office of the clerk of the high court of errors and appeals his writ of error and accompanying record; which are in the words and figures following, to wit, (returnable to the ensuing November term of said court):

Writ of error.

The State of Mississippi, to the clerk of the circuit court of Madison county, greeting:

Because manifest error hath intervened in the record, process, proceedings, and judgment, in and before said circuit court, in a suit between William Robertson, trustee of the Commercial Bank of Natchez, plaintiff, and Henry R. Coulter and James Richards, executors of the last will and testament of Joseph Collins, deceased, defendants, of a plea of trespass on the case, in assumpsit, wherein the plaintiff recovered of the said Henry R. Coulter and James Richards, executors as aforesaid, on the 16th day of April, A. D. 1849, the sum of three thousand two hundred and twenty-five dollars and ninety-four cents damages, besides costs of suit; to the great damage of said Coulter and Richards, executors as aforesaid, as by complaint of said Coulter and Richards, executors as aforesaid, we are informed that there is manifest error to the prejudice of said defendants, as executors as aforesaid.

And we being willing that error, if any there be, shall be corrected in due manner, and full and speedy justice done in the matter, do command you, if judgment be so given, to send, under the seal of your said court, openly and distinctly, a complete and perfect exemplification of all of the said record, process, proceedings, and judgment, with this writ, so that the same be before our high court of errors and appeals, to be held at Jackson on the first Monday of November next, that, on inspection thereof, our said high court may cause to be done

thereupon for the correction of that error, what of right, and according to our laws, ought to be done.

Witness the honorable William L. Sharkey, chief justice of our said high court, the first Monday of January, 1850.

Witness also Henry R. Coulter, clerk of our said circuit court, and the seal of that court in the margin hereof, the 20th day of July, A. D. 1850, this last day being the day of the date and issuance of this writ.

HENRY R. COULTER, *Clerk*.

I send herewith, as commanded, a complete and perfect exemplification of the record of the suit mentioned in the above writ.

Attest: HENRY R. COULTER, *Clerk*.

Transcript of record.

THE STATE OF MISSISSIPPI,
Madison county.

WILLIAM ROBERTSON, trustee of Commercial Bank of Natchez,
vs.
COULTER & RICHARDS, executors of Joseph Collins, deceased.
} 3633.

At a regular term of the circuit court of the fifth judicial district, of the State aforesaid, begun and held at the court-house in the town of Canton, in and for the county aforesaid, on the first Monday and first day of April, in the year of our Lord one thousand eight hundred and fifty, and in the seventy-fourth year of the independence of the United States of America—

Present, the honorable Robert C. Perry, presiding judge; William S. Bailey, esq., sheriff; and Henry R. Coulter, clerk.

In the record of proceedings of said court, among others the following were had, to wit:

Be it remembered, that heretofore, to wit, on the 22d day of January, A. D. 1849, the above named William Robertson, trustee of the Commercial Bank of Natchez, by Tullius C. Tupper, esquire, his attorney, filed in court here his declaration against the said defendants, Henry R. Coulter and James Richards, executors of the last will and testament of Joseph Collins, deceased, in the words, figures, and form following, to wit:

THE STATE OF MISSISSIPPI, *Madison county*.

Circuit court, April term, 1849.

William Robertson, trustee of the Commercial Bank of Natchez, by attorney, complains of Henry R. Coulter and James Richards, executors of the last will and testament of Joseph Collins, deceased, in cus-

tody, &c., of a plea of trespass on the case on promises: For that whereas, the said Joseph Collins in his lifetime, and William Muse and John T. Shine, heretofore, to wit, on the 7th day of March, A. D. 1844, at Canton, to wit, at the county and State aforesaid, made their certain promissory note in writing, and thereby then and there promised to pay, twelve months after the seventh day of March, A. D. 1844, to the Commercial Bank of Natchez, or order, at the branch of said bank at Canton, for value received, thirteen hundred and eight and $\frac{32}{100}$ dollars, and then and there delivered said promissory note to the said Commercial Bank of Natchez. And the said plaintiff avers that after the making and delivery of said promissory note, and before the commencement of this suit, to wit, on the 12th day of June, anno Domini 1845, according to the statute in such case made and provided, a judgment of forfeiture was rendered against the said Commercial Bank of Natchez, and said plaintiff was duly and legally appointed trustee of the same, by the circuit court of Adams county, State aforesaid, and as such trustee said plaintiff took possession of said promissory note; of all which the said Collins in his lifetime then and there had notice, to wit, at the county aforesaid, by means whereof, and by force of the statute in such case made and provided, and the said Collins in his lifetime then and there became liable, and then and there promised to pay to said plaintiff, as trustee as aforesaid, the said sum of money in said promissory note specified, according to the tenor and effect thereof. Yet the said Joseph Collins in his lifetime, and since his death said defendants as executors as aforesaid, before the rendition of said judgment of forfeiture, and the appointment of said plaintiff as trustee as aforesaid, have not, nor has either of them paid the said sum of money, or any part thereof, to the said Commercial Bank of Natchez, nor since the rendition of said judgment and the said appointment of trustee, to the said plaintiff as trustee as aforesaid, (although often requested so to do,) but have hitherto wholly neglected and refused and said defendants still neglect and refuse so to do, to the plaintiff's damage as trustee, &c., two thousand dollars, and therefore he brings his suit, &c.

T. C. TUPPER,
Plaintiff's attorney.

And afterwards, to wit, on the 22d day of January, A. D. 1849, a writ of capias ad respondendum was issued in said cause, directed to the sheriff of Madison county, in the words, figures, and form following, viz:

THE STATE OF MISSISSIPPI:

To the sheriff of Madison county, greeting:

You are hereby commanded to take Henry R. Coulter and James Richards, executors of the last will and testament of Joseph Collins, deceased, if found in your county, and them safely keep, so that

you have their bodies before the circuit court, to be holden in and for the county of Madison, on the first Monday of April next, to answer William Robertson, trustee of the Commercial Bank of Natchez, of a plea of trespass on the case on promises, to the damage of said plaintiff as trustee, &c., two thousand dollars, and have then there this writ.

Witness the honorable Robert C. Perry, judge of the fifth judicial district of said State, the first Monday of October, in the year of our Lord one thousand eight hundred and forty-eight, and seal of said court.

Issued the 22d day of January, 1849.

HENRY R. COULTER, *Clerk.*

This action of assumpsit is founded on the promissory note made by William Muse, Jno. T. Shine and Joseph Collins, payable to the Commercial Bank of Natchez or order, at the branch of said bank at Canton, for the sum of $1,308 32 cents, for value received, dated day of , 184 , and due twelve months after the seventh day of March, 1844. No bail required, but judgment will be required at the return term of this writ.

T. C. TUPPER, *P. Q.*

Declaration filed when writ issued.

Attest: HENRY R. COULTER, *Clerk.*

Which said writ came to the hands of the sheriff of said county, and was by him returned with the following endorsement made thereon as returns, viz: Rec'd January 22, 1849.

WM. S. BAILEY, *Sheriff,*
By G. FALKNER, *Deputy.*

Executed on Henry R. Coulter, January 30, A. D. 1849.

WILLIAM S. BAILEY, *Sheriff,*
By G. FALKNER, *Deputy.*

Executed on James Richards, February 7, A. D. 1849.

WM. S. BAILEY, *Sheriff,*
By G. FALKNER, *Deputy.*

And afterwards, to wit, at the April term, 1849, said defendants, by their attorney, Alexander H. Handy, esquire, filed in court here their pleas as follows, viz:

And the said defendants, by attorney, come and defend the wrong and injury, when, &c., and say "actio non," &c., because they say that the said defendant's testator did not, in his lifetime, undertake or promise in manner and form as the said plaintiff above thereof hath complained against them, and of this they put themselves upon the country, &c.

A. H. HANDY, *Att'y for def'ts.*

And heretofore, to wit, on the 22d day of January, A. D. 1849, said plaintiff, by Tullius C. Tupper, esquire, his attorney, filed in court here his said other declaration against said defendants as executors, as aforesaid, in form following, to wit:

THE STATE OF MISSISSIPPI,
Madison county.

Circuit court, April term, 1849.

William Robertson, trustee of the Commercial Bank of Natchez, by attorney, complains of Henry R. Coulter and James Richards, executors of the last will and testament of Joseph Collins, deceased, in custody, &c., of a plea of trespass on the case on promises: For that, whereas the said Joseph Collins, in his lifetime, and John T. Shine and William Muse, heretofore, to wit, on the seventh day of March, A. D. 1845, at Canton, to wit, at the county and State aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay, twelve months after the seventh day of March, A. D. 1845, to the said Commercial Bank of Natchez or order, at the branch of said bank at Canton, for value received, twelve hundred and ten dollars, and then and there delivered said promissory note to the said Commercial Bank of Natchez. And the said plaintiff avers, that after the making and delivery of said promissory note, and before the commencement of this suit, to wit, on the 12th day of June, anno Domini 1845, according to the statute in such case made and provided, a judgment of forfeiture was rendered against the Commercial Bank of Natchez, and said plaintiff was duly and legally appointed trustee of the same, by the circuit court of Adams county, State aforesaid, and as such trustee said plaintiff took possession of said promissory note, of all which the said Collins, in his lifetime, then and there had notice, to wit, at the county aforesaid, by means whereof, and by force of the statute in such case made and provided, the said Collins, in his lifetime, then and there became liable, and then and there promised to pay said plaintiff, as trustee as aforesaid, the said sum of money in said promissory note specified, according to the tenor and effect thereof. Yet the said Joseph Collins, in his lifetime, and since his death said defendants, as executors as aforesaid, before the rendition of said judgment of forfeiture and the appointment of said plaintiff as trustee as aforesaid, have not, nor has either of them, paid the said sum of money, or any part thereof, to said Commercial Bank of Natchez, nor since the rendition of said judgment and the said appointment of said trustee to the said plaintiff, as trustee as aforesaid, (although often requested so to do,) but have hitherto wholly neglected and refused, and said defendants still neglect and refuse so to do, to the plaintiff's damage as trustee, &c., two thousand dollars, and therefore he brings his suit, &c.

T. C. TUPPER, *Plff's att'y.*

And afterwards, to wit, on the 22d day of January, A. D. 1849, a writ of capias ad respondendum was issued in said cause, directed to the sheriff of Madison county, in the words, figures and form following, to wit:

THE STATE OF MISSISSIPPI:

To the sheriff of Madison county, greeting:

You are hereby commanded to take Henry R. Coulter and James Richards, executors of the last will and testament of Joseph Collins, deceased, if found in your county, and them safely keep, so that you have their bodies before the circuit court to be holden in and for the county of Madison, on the first Monday of April next, to answer William Robertson, trustee of the Commercial Bank of Natchez, of a plea of trespass on the case on promises, to the damage of said plaintiff as trustee, &c., two thousand dollars. And have then there this writ.

Witness the honorable Robert C. Perry, judge of the fifth judicial district of said State, the first Monday of October, in [L. S.] the year of our Lord one thousand eight hundred and forty-eight, and seal of said court.

Issued the 22d day of January, 1849.

HENRY R. COULTER, *Clerk.*

This action of assumpsit is founded on the promissory note made by John T. Shine, William Muse and Joseph Collins, payable to the Commercial Bank of Natchez, or order, at the branch of said bank at Canton, for the sum of $1,210 00 cents, for value received, dated , 18 , and due twelve months after the seventh day of March, 1845. No bail required at the return term of this writ.

T. C. TUPPER, *P. Q.*

Declaration filed when writ issued.

Attest: HENRY R. COULTER, *Clerk.*

Which said writ came to the hands of the sheriff of said county, and was by him returned, with the following endorsement made thereon, as returned, viz:

"Rec'd, Jan. 22d, 1849.

WM. S. BAILEY, *Sheriff,*
By G. FALKNER, *Deputy.*

Executed on Henry R. Coulter, January 30, A. D. 1849.

WM. S. BAILEY, *Sheriff,*
By G. FALKNER, *Deputy.*

Executed on James Richards, Feb'y 7th, 1849.

WM. S. BAILEY, *Sheriff,*
By G. FALKNER, *Deputy.*

And afterwards, to wit, at the April term, 1849, said defendants, by their attorney, Alexander H. Handy, esquire, filed in court here their plea, as follows, viz:

And the said defendants, by attorney, come and defend the wrong and injury, when, &c., and say, actio non, &c., because they say that the said defendants' testator did not, in his lifetime, undertake or promise, in manner or form as the said plaintiff above thereof hath complained against them, and of this they put themselves upon the country, &c.

A. H. HANDY,
Attorney for defendants.

And afterwards, to wit, on the 21st day of April, A. D. 1849, an order was made and entered upon the minutes of said court in said cause, as follows, viz:

WILLIAM ROBERTSON, trustee, &c.,
vs.
COULTER & RICHARDS, ex'rs, &c. } 3634.

This day came the parties, by their respective attorneys, and the defendants, by their attorneys, moved the court to consolidate these actions, because the causes of action should have been embraced in one suit; which said motion was granted by the court. It is therefore ordered by the court that said actions be consolidated.

And afterwards, to wit, on the 22d day of October, A. D. 1849, an order was made in said cause, and entered upon the minutes of said court in this cause as follows, viz:

"This day came the parties aforesaid, by their respective attorneys, and, on motion of defendants, by their attorneys, it is ordered by the court that this cause be continued until the next term of this court, as on affidavit of the defendants, and at their costs of this term of the court, and that the plaintiff have therefor his execution."

And afterwards, to wit, on the 16th day of April, A. D. 1850, said defendants, by their attorney, A. H. Handy, esquire, by leave of the court for that purpose, filed in court here the following plea, to wit:

And for further plea in this behalf, by leave of the court first had and obtained, the said defendants say, actio non, &c., because they say that after the appointment of the said plaintiff as trustee, as set forth in said plaintiff's declaration, and after the commencement of this suit, he, the said plaintiff, collected and received of the debts, effects, and property of the said Commercial Bank of Natchez, a large amount of money, sufficient to pay and discharge all and singular the debts of the said bank, and that he, the said trustee, has also collected and received of the debts, effects, and property of the said bank, an amount of money sufficient to pay and satisfy and discharge all and singular the costs, charges, and expenses incident to the performance of the trust conferred upon the said plaintiff by virtue of the said judg-

ment and appointment of the circuit court of Adams county aforesaid. And this they are ready to verify; wherefore they pray judgment whether the said plaintiff ought further to have and maintain his said action against them, &c.

A. H. HANDY,
Attorney for defendants.

Personally appeared in open court, Henry R. Coulter, one of the defendants named in the above stated action, and duly makes oath that the above plea is true in substance and in fact.

HENRY R. COULTER.

Sworn to and subscribed in open court this 4th April, A. D. 1850.
ROBERT C. PERRY, *Judge, &c.*

Demurrer in short to foregoing plea and joinder by consent.

TUPPER, *P. Q.*
A. H. HANDY,
For defendants.

And for further plea in this behalf, by leave of the court first had and obtained, the said defendants say, actio non, &c., because they say that, in the same matter of controversy in the circuit court of Adams county, mentioned in the said plaintiff's declaration, and wherein the said plaintiff was appointed trustee, as set forth in said plaintiff's declaration, and at the November term, A. D. 1846, of said circuit court, the said plaintiff, as trustee as aforesaid, made and returned to the said circuit court a schedule of the effects, property, and evidence of debt of and belonging to the said Commercial Bank of Natchez, and which had come to his hand or possession. And thereupon, afterwards, and at the same term of the said circuit court, on the motion of William T. Martin, district attorney for the first judicial district of said State, it was ordered and adjudged by said court that the said plaintiff, trustee as aforesaid, should sell to the highest bidder for cash all the property and evidences of debt of said bank specified in said schedule; which said judgment remains in full force and unreversed, as by the record thereof in said court remaining appears.

And the said defendants aver that the said promissory notes in the said plaintiff's declaration mentioned were specified and set forth in the said schedule, by the said plaintiff rendered as aforesaid, and were included in the aforesaid order and judgment of said circuit court. And this they are ready to verify by the record; wherefore they pray judgment, &c.

A. H. HANDY,
Attorney for defendants.

Demurrer to the foregoing plea and joinder in short by consent of parties.

TUPPER, *P. Q.*
A. H. HANDY,
For defendants.

And afterwards, to wit, on the 16th day of April, A. D. 1850, orders and judgments were made and rendered in said cause, and entered upon the minutes of said court, as follows, to wit:

This day came the parties aforesaid, by their respective attorneys, and on motion of the defendants, by their attorney, leave is given them to file two additional pleas in said cause, which is accordingly done.

Whereupon, all and singular the premises being seen, heard, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the court here that the second and third pleas of the said defendants, by them above pleaded, and the matters therein contained, are not sufficient in law to bar and preclude the said plaintiff from having and maintaining his said action against said defendants, as executors as aforesaid, in manner and form as the said plaintiff has above alleged. Whereupon came the following good and lawful jury to try the issue joined as to the first pleas, to wit: David R. McAllister, Owen H. Baldwin, William McMillan, William F. Carson, Hugh Hayes, B. L. Prichard, Wm. Carson, E. O. Chaffee, C. C. Neel, P. H. Luckett, Barnabas Herrod, and William F. Walker, who, being duly empaneled and sworn, upon their oath do say:

We, the jury, find the issue joined for the plaintiff, and assess his damages at three thousand two hundred and twenty-five dollars and ninety-four cents; therefore it is considered by the court, that the said plaintiff recover of the said defendants, Henry R. Coulter and James Richards, executors of the last will and testament of Joseph Collins, deceased, the damages aforesaid, by the jury in their verdict aforesaid assessed, also his proper costs by him about his suit in this behalf expended, and that he have therefor his execution, to be levied of the goods and chattels which were of the said Joseph Collins, deceased, at the time of his death in the hands of the said Coulter and Richards, executors as aforesaid, remaining to be administered, if so much thereof in their hands they have, &c.

And afterwards, to wit, on the 11th day of July, A. D. 1850, said defendants, by A. H. Handy, their attorney, filed in court here their petition for supersedeas and writ of error, as follows, to wit:

In the circuit court of Madison county, Mississippi, at April term, 1850.

WM. ROBERTSON, trustee, &c.
vs.
COULTER and RICHARDS, ex'rs of Joseph Collins, deceased.

Judgment the 16th day of April, 1850, for $3,225 94 damages, and $39 25 costs.

To Henry R. Coulter, esquire, clerk of the circuit court of Madison county, Mississippi:

The petition of Henry R. Coulter and James Richards, executors of the last will and testament of Joseph Collins, deceased, respectfully

shows, that at the April term, A. D. 1850, of said Madison circuit court, on the 16th day of April, A. D. 1850, a judgment was rendered in favor of William Robertson, trustee of the Commercial Bank of Natchez, against your petitioners for the sum of three thousand two hundred and twenty five dollars and ninety-four cents damages, besides costs of suit, in which judgment your petitioners believe there is manifest error to their prejudice. They therefore pray that the writ of error may issue, to operate as a supersedeas on said judgment, to the end that the record of said judgment may be examined by the high court of errors and appeals, and that the errors therein may be corrected, and that the record of said case be made out and transmitted to said high court of errors and appeals. And they will ever pray, &c.

A. H. HANDY, *Att'y for petitioners.*

THE STATE OF MISSISSIPPI,
Madison county.

I, Henry R. Coulter, clerk of the circuit court, in and for the county and State aforesaid, do hereby certify, that the above and foregoing twelve pages contain a true and correct copy of the record in the above and foregoing stated case, wherein Wm. Robertson, trustee of the Commercial Bank of Natchez, is plaintiff, and Henry R. Coulter and James Richards, executors of the last will and testament of Joseph Collins, deceased, are defendants.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Canton, this the 20th day of July, A. D. 1850.

HENRY R. COULTER,
Clerk Madison circuit court, Mississippi.

(The citation from the circuit court of Madison county does not appear on file among the papers.)

And afterwards, to wit, on Monday, June the 7th, A. D. 1852, it being a day of the term of said high court, begun and held at the capitol at the city of Jackson, on the third Monday of April, A. D. 1852, the following entry was made upon the minutes of said court in said cause, to wit:

COULTER and RICHARDS, ex'rs,
vs.
WILLIAM ROBERTSON, trustee. } 4056.

This cause was argued by Mr. Handy, of counsel for the plaintiff in error.

And afterwards, to wit, on Tuesday, the 8th day of June, A. D. 1852, the same being another day of said term of said court, the following entry was made upon the minutes of said court in said cause, to wit:

3854.

COULTER and RICHARDS, ex'rs,
vs.
WILLIAM ROBERTSON, trustee. } 4056.

This cause was argued by Mr. McMurran and Mr. Tupper, of counsel for the defendant in error. And on Wednesday, the 9th day of June, A. D. 1852, it being another day of said term of said court, the following entry was made upon the minutes of said court in this cause, to wit:

COULTER and RICHARDS, ex'rs, &c.,
vs.
WILLIAM ROBERTSON, trustee. } 4056.

This cause was argued by Mr. Winchester, of counsel for the plaintiff in error, and by Mr. George S. Yerger, for defendant, who did not conclude his argument.

And on Thursday, 10th June, 1852, the same being a day of the term of said court, begun and held on the third Monday of April, the following entry was made upon the minutes of said court in this cause, to wit:

COULTER and RICHARDS, ex'rs, &c.,
vs.
WILLIAM ROBERTSON, trustee. } 4056.

In this cause Mr. George Yerger resumed and concluded his argument on behalf of the defendant in error, and thereupon Mr. Boyd, of counsel for the plaintiff in error, commenced, but did not conclude his argument.

And afterwards, to wit, on Friday, June 11th, 1852, the same being another day of the term of said court, begun and held at the capitol on the third Monday of April, 1852, the following was entered upon the minutes of said court in this cause, to wit:

COULTER and RICHARDS, ex'rs, &c.,
vs.
WILLIAM ROBERTSON, trustee. }

Mr. Boyd, of counsel for the plaintiff in error, resumed and concluded his argument, and the cause was submitted.

And now, afterwards, to wit, on Saturday, July the 17th, it being a day of the term of our said high court, begun and held at the court room in the capitol at the city of Jackson, on the third Monday of April, A. D. 1852, the following final judgment was rendered in this cause by said court, to wit:

HENRY R. COULTER and JAMES RICHARDS, executors of Joseph Collins, deceased, plaintiffs in error,
vs.
WILLIAM ROBERTSON, trustee, &c., defendant in error. } 4056.

This cause having been submitted on a former day of this term, upon

the record from the circuit court of Madison county; and this court having sufficiently examined and considered the same; and being of opinion that there is error in the judgment of said court rendered in this cause, in favor of the defendant in error, at the April term thereof, in the year 1850. It is therefore considered by this court, and so ordered and adjudged, that the said judgment of the said court be and the same is hereby reversed, the demurrer to the second plea overruled, and the cause remanded for further proceedings.

And it is further considered, and so ordered and adjudged, that the plaintiffs in *in* error do have and recover of the defendant in error the costs by them about this suit in this behalf expended, to be taxed, &c.

And afterwards, to wit, on Saturday, July 17th, 1852, it being a day of the term of said court begun and held on the third Monday of April, 1852, and the same day on which the foregoing final judgment was rendered in this cause, the following order was made in this cause, to wit:

COULTER AND RICHARDS, ex'rs, &c.,
vs.
WILLIAM ROBERTSON, trustee. } 4056.

On motion of Mr. Tupper, of counsel for the defendant in error, leave is granted him until the first Monday, the sixth day of September next, within which to file a petition for a re-argument in this cause.

And afterwards, to wit, on Monday, November the 1st, 1852, the same being a day of the term of our said high court, begun and held at the capitol in the city of Jackson, on the third Monday of October, A. D. 1852, the following order was made in said cause, to wit:

COULTER AND RICHARDS, ex'rs, &c.,
vs.
WILLIAM ROBERTSON, trustee. } 4056.

On consideration of the petition for re-argument, filed by Mr. G. S. Yerger, of counsel for the defendant in error in this cause, it is ordered that the same be overruled and refused.

And afterwards, to wit, on Monday, March the 28th, A. D. 1853, the same being also a day of the term of said court, begun and held at the capitol at the city of Jackson, on the third Monday of October, A. D. 1852, the following final judgment was rendered in this cause, by said court, to wit:

COULTER AND RICHARDS, ex'rs, &c.,
vs.
WILLIAM ROBERTSON, trustee. } 4056.

On motion of the defendant in error, by Mr. G. S. Yerger, his counsel, it is ordered that the judgment entered in this cause at the April term of this court, in the year 1852, be, and the same is hereby, set aside and annulled. And it is now considered and so ordered and

adjudged by this court, that the judgment of the said circuit court of Madison county, rendered in this cause in favor of the defendant in error, at the April term thereof, in the year 1850, be and the same is hereby reversed; and this court, now proceeding according to the statute to render such judgment as the court below should have rendered, doth consider and so order and adjudge, that the demurrer of the plaintiff in that court to the second plea of the defendants be, and the same is hereby overruled; and the defendant in error not desiring to make any other or further answer thereto, it is further considered and so ordered and adjudged that said plea constitutes and is a full and complete bar to the enforcement of the right set out in said declaration; and that the plaintiffs in error, as such executors, go hence fully and finally discharged therefrom, and recover of said defendant the costs by them about their suit in this behalf expended, &c.

Know all men by these presents, that we, William Robertson, trustee, and George S. Yerger, of the State of Mississippi, are held and firmly bound unto Henry R. Coulter and James Richards, executors, &c., of Joseph Collins, deceased, in the full and just sum of five hundred dollars, to be paid to the said Henry R. Coulter and James Richards, executors, &c., of Joseph Collins, deceased, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 25th day of June, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas lately, at a high court of errors and appeals, of the State of Mississippi, in a suit depending in said court, between Henry R. Coulter and James Richards, executors, &c., of Joseph Collins, deceased, and William Robertson, trustee, &c., a judgment was rendered against the said William Robertson, trustee, &c.; and the said William Robertson, trustee, &c., having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Henry R. Coulter and James Richards, executors, &c., of Joseph Collins, deceased, citing and admonishing [them] to be and appear at *at* Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such, that if the said William Robertson, trustee, &c., shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

WM. ROBERTSON, *Trustee, &c.*, [L. S.]
By his attorney G. S. Yerger.
GEO. S. YERGER. [L. S.]

Approved by

C. P. SMITH, *Chief just. of the court, &c.*

THE STATE OF MISSISSIPPI,
High court of errors and appeals.

I, Caswell R. Clifton, clerk of said court, do hereby certify, that the preceding pages contain a full, true, and perfect copy of the record in the case of Coulter and Richards, executors, &c., plaintiffs in error, vs. William Robertson, trustee, defendant, from the circuit court of Madison county in said State, together with the proceedings, orders, and judgments of the high court of errors and appeals thereon; also a true copy of the writ of error bond, as the same have been accurately compared with the originals now of record and on file in my office.

In testimony whereof I have hereunto set my hand, and affixed the [L. S.] seal of said court, at office, in the capitol, at the city of Jackson, this the 11th day of August, A. D. 1853.

C. R. CLIFTON.

THE STATE OF MISSISSIPPI,
High court of errors and appeals.

I, C. P. Smith, presiding judge of said court, hereby certify that Caswell R. Clifton, whose certificate under the seal of said court, which concludes the preceding transcript, was at the date thereof, and is, the clerk of said court, duly appointed and qualified, and that his said certificate and attestation bears his genuine signature, and is in due form of law.

Given under my hand, this 11th August, 1853.

C. P. SMITH.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of [L. S.] the high court of errors and appeals of the State of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said high court of errors and appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Henry R. Coulter and James Richards, executors, &c., of Joseph Collins, deceased, and William Robertson, trustee, &c., wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath hap-

pened, to the great damage of the said William Robertson, trustee, &c., as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-two.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by C. P. Smith, chief justice of the high court of errors and appeals of the State of Mississippi.

THE UNITED STATES OF AMERICA:

To Henry R. Coulter and James Richards, executors, &c., of Joseph Collins, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the high court of errors and appeals, wherein William Robertson, trustee, &c., is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable C. P. Smith, chief justice of the high court of errors and appeals of the State of Mississippi, this 25th day of June, in the year of our Lord one thousand eight hundred and fifty-three.

C. P. SMITH.

THE STATE OF MISSISSIPPI,
Madison county.

On this the nineteenth day of July, in the year of our Lord one thousand eight hundred and fifty three, personally appeared William S. Bailey, before me, the subscriber, an acting justice of the peace in and for Madison county, State of Mississippi, and makes oath that he delivered a true copy of the within citation to Henry R. Coulter and

James Richards, executors, &c., of Joseph Collins, deceased, on this the 19th day of July, 1853.

WILL. S. BAILEY,
Special dept'y marshal,
For RICH'D GRIFFITH,
M'l So. Dist.

Service - - - -	$4 00
Mileage - - - -	3 00
Copies - - - -	50
	$7 50

Sworn to and subscribed before me,
WM. MONTGOMERY, *J. P.* [SEAL.]

Served the within citation July 19th, 1853, on Henry R. Coulter and James Richards, executors, &c., of Joseph Collins, deceased, by delivering to each of them a copy of the same.
WILL. S. BAILEY.

I nominate and appoint William S. Bailey my special deputy to execute and return this citation. Witness my hand and seal this 25th June, 1853.
RICH. GRIFFITH,
U. S. Marshal.

THE STATE OF MISSISSIPPI,
High court of errors and appeals.

Be it remembered, that on the 30th day of August, A. D. 1852, William Robertson, trustee, &c., filed in the office of the clerk of our said high court of errors and appeals a petition for a re-argument in the case of Coulter and Richards, plaintiffs in error, *vs.* William Robertson, defendant in error, which said petition reads in the words and figures following, to wit:

COULTER and RICHARDS, ex'rs, &c.
vs.
WM. ROBERTSON.
} High court.

To the honorable the judges of the high court of errors and appeals of the State of Mississippi.

Your petitioners respectfully state, that in their opinion there ought to be a re-argument granted in the above cause and the other causes depending on it, as referred to in schedule A A, hereto annexed. Your petitioners believe, for reasons assigned by them in their argument to support this petition, that the opinion and judgment rendered in this cause *is* erroneous, and they therefore pray that a re-argument may be ordered.

McMURRAN, YERGER,
POTTER, and TUPPER,
Att'ys for def't in error.

We, the undersigned attorneys of said court, and not counsel in above case, do hereby certify, that we have examined the opinion and briefs and arguments of counsel in the above cause, &c., and concur in the opinion that a re-argument of said cause ought to be granted. The questions are important, the amount involved large; this, together with the belief that the court may perhaps on a re-argument change their opinion, has brought our minds to the conclusion, that in order to do complete justice to all parties a re-argument should be ordered.

GEO. WORK,
THOS. SHACKLEFORD,
C. C. SHACKLEFORD.

The argument in support of the above petition accompanies it.

Schedule A. A.

4056	Coulter and Richards, ex'rs, &c.,	vs.	Wm. Robertson, trustee.
2926	Chas. G. Dahlgreen, adm'r,	vs.	Same.
6066	Wm. D. Henry et al.	vs.	Same.
6067	Wm. R. Hill et al.	vs.	Same.
6070	Jas. S. & Wm. M. Reid, ex'rs.,	vs.	Same.
6252	Wm. Sadler et al.	vs.	Same.
6253	Wm. S. Heard et al.	vs.	Same.
6254	Lawson F. Henderson	vs.	Same.
6255	do. do.	vs.	Same.
6257	Henderson, adm'x, et al.,	vs.	Same.
6258	P. A. Livingston et al.	vs.	Same.
6260	Henderson & Coulter, adm'r, et al.	vs.	Same.
6263	Jesse B. Ward et al.	vs.	Same.
6264	Robert Love et al.	vs.	Same.
6265	John J. Lamar et al.	vs.	Same.
6267	George Calhoun	vs.	Same.
6269	Coulter & Richards, ex'rs,	vs.	Same.
6271	Nathan B. Whitehead et al.	vs.	Same.
6272		vs.	Same.
6273	Jas. J. Pugh, adm'r, et al.,	vs.	Same.
6016	Cameron and Drane	vs.	Same.
6063	John C. Gillespie, ex'r,	vs.	Same.
6495	Thos. A. Smith	vs.	Same.

The undersigned, attorneys of the court, not being of counsel or interested in any of the causes mentioned in the foregoing petition, do certify that we have examined the records in said causes, and have heard the briefs of counsel, and the opinion of the court and authorities cited, and are of opinion that re-arguments ought to be granted, as prayed for in said petition.

GEO. WORK,
JNO. D. ELLIOTT,
WM. R. MILES.

And on the same day, to wit, the 30th day of August, 1852, the following argument in support of the foregoing petition was filed in the office of the clerk of our said high court, to wit:

High court.—Petition for re-argument.

COULTER & RICHARDS, ex'rs,
vs.
WM. ROBERTSON, trustee.

The counsel for appellee respectfully ask for a re-argument of this case. They hereto annex the printed brief of one of them, G. S. Yerger, as a part of this argument, marked A. And they would respectfully state they believe the positions there assumed have not been successfully answered by the court, which they will endeavor to show. They will also refer to a few additional authorities not cited before.

The two principal positions they then assumed and now assume is:

1st. The obligation of a contract of an individual or corporation is not extinguished by the death of either, in the true and legal sense of the term "extinguishment."

Where the law has not provided a remedy, or a representative to enforce the contract, all remedy on it is necessarily extinguished, and hence it is said the contract is extinguished. But where a remedy is afforded afterwards, or the general law provides for the appointment of a representative, in whom by the terms of the law the legal title vests, such representative can enforce the contract—its obligation is in full force, and all existing rights attach to it.

But 2d. Suppose by the common law this were so—yet, if a statute provides a representative before the dissolution, and therefore before the contract is extinguished, upon the dissolution of the corporation the contract vests in him—not apart, but all—for it cannot be divided. The obligation is a unit; either it must exist altogether, or it must be altogether gone. It is a legal solecism to say part of the obligation may exist and part not.

3d. The legislature have here said there shall be a representative appointed; they have said the contracts shall not be extinguished. The whole obligation of the contract is then preserved; and allowing, for the sake of the argument, that the construction of the statute is that the contracts shall be preserved, and their obligation not extinguished, for the purpose of paying debts only, and that no other rights shall attach, then this part of the statute is unconstitutional and void. For we lay it down as a broad rule that the legislature cannot, when it has passed a law to prevent a contract being extinguished by death—we say it cannot change its obligations—it cannot say those who are by law *are* entitled to it shall not have it; nor can it, directly or indirectly, exclude one class of individuals who were entitled to a part. The obligation and contract being preserved, they cannot say a part only shall be received; if they do so say, such part of the law is contrary to the Constitution of the United States, and cannot be enforced.

These positions we think we clearly proved in the argument. We shall now proceed to answer the objections of the court, and endeavor to show that they do not apply.

In regard to the 1st position, that the obligation of the contract exists, although in case of death or dissolution there is no one to enforce it, the court say, "they do not assent to the proposition, and believe it unsustained by authority."

We answer most respectfully, we think otherwise. There is no difference between the death of a natural and artificial person at common law; in fact the effects of a dissolution of a corporation *is* predicated entirely upon the principle which affects or applies in case of the death of a natural person. At common law, if a natural person died intestate and without heirs, the contract died with him; his real estate reverted to the grantor, and his personal estate went to the king. The same principle was applied to the dissolution or death of an artificial person. Now it follows, that if before any statute was passed allowing administration on a natural person's estate, the obligation of the contract did not cease, it does not, nor cannot by parity of reason, cease in this.

The principal *of* objection taken by the court to this view of the subject is, that there is a difference between goods, chattels, and lands, and contracts; that the former have an owner, but that in regard to the latter there must be in existence always a debtor and a creditor at the same time; and if there is not, the debt is extinguished. If the rule thus laid down by the court were true, it would not apply to this case; for, whilst the bank existed there was a creditor, and immediately on its death and the appointment of a trustee, the trustee became the creditor. But the principle as applied by the court is wrong; it proves too much, and therefore proves nothing. To test a principle it must be run out—it must be carried out—and if it is false in an analogous case, it must from necessity be false in toto. Let us test it: A man dies, no administration is taken out on his estate for ten years; for ten years there is no creditor; no one entitled to receive the debt, no one entitled to *receive* it; therefore, according to the above position, it is extinguished. But to this it may be answered, "when administration is taken out, the debt is considered as existing by relation; that the right of the executive is considered to relate, by a legal fiction, to the death, and therefore there is, in point of law, a creditor all the time.

This is freely granted. But pray, will not the same rule follow in the case of a corporation? When the law afterwards authorizes and administration on the effects of the bank, and one is appointed, if by a legal fiction the debt is considered as vested in an administrator by relation to the death, pray why, by the same fiction, is not the debt in this case considered as vested from the death of the corporation?

I simply ask to point out the difference. If there must be a creditor all the time, and if that creditor in one case is considered as existing by relation, it must, if there be reason and sense in the rule, be considered as existing in the other.

But the court itself qualifies the above rule, and settles the case in my favor, if it, as I respectfully urge, will carry out its own principle; it says the debt ceases to exist, "without there is a representative, or the possibility of a representative." This is the court's own qualification of the rule, and I agree to it. It then follows from this rule, if there is a representative, or if "there is a possibility of a representative," the obligation of the debt is not extinguished.

Here we contend there was actually a representative, appointed before the contract was extinguished by law, but, for argument's sake, we will suppose there was not; "then, according to the court, if there be a possibility of one," the obligation does not cease. Now suppose there was no law authorizing the appointment of a representative, was it not possible the legislature might authorize one to be appointed; was not this within the range of possibility? If it is, then the court itself, by its own rule, proves my argument correct; and this was the reason why the supreme court of Maine decided in a case, where a charter had expired, that a subsequent law authorizing the appointment of trustees was constitutional, and that they could collect its debts. This case was not before the court on the argument, and it will be adverted to hereafter. We then think, so far as this reason is concerned, that it, so far from overthrowing our position, affirms it.

Supposing the comment and views of the court *when* the case of Mumma and the Farmers' Bank of Greencastle to be correct, what answer can be given to the principle of the common law in regard to natural persons, and to the express decision of the supreme court in Maine, in 1 Maine Reports, 79, Kenebeck Bank vs. Richardson?

Besides, whether Mumma's case proves it or not, Mr. Justice Story and Justice Kent both lay down the rule as I do, and the learned counsel on the other side, Judge Boyd, in the Comm. Bank vs. Chambers, has argued and proved the position I lay down so conclusively, that, in our estimation, he could not answer his own arguments in this. (See him fully quoted in my printed brief.)

2. But suppose we are wrong in this, we maintain these contracts and their obligations never did cease, nor were they ever extinguished. The rule of the common law has [been] expressly repealed. The act of 1843 say the debt shall not be extinguished. Now, if they are not extinguished, those beneficially entitled may receive, either at law or in equity, where a party is appointed as a trustee, and the legal title passes to him. And again, if they are not extinguished, their legal obligation must remain; and then the act of 1846, directing how the proceeds should be applied, would be perfectly constitutional, and under that act stockholders would be entitled.

But we proceed to show that the legislature had no power to exclude debtors or stockholders. Upon this point I cannot lay down the rule more clearly than Judge Boyd has done in Chambers' case; I therefore adopt his 5th and 7th points, and the 2d and 3d division of his 10th point. (They will be found at pages 5 and 6 of my printed argument hereto annexed.)

To illustrate this part of our argument, and to answer the views of the court on this head, we will suppose a case, for by this means we can test the accuracy of a position.

The argument of opposing counsel and of the court is, that although the legislature declare the debts shall not be extinguished, yet, as they do not declare the rights of the stockholders saved, they are gone. Now, suppose the act had declared the debts should not be extinguished, but a trustee appointed to collect them, and had said nothing as to how the proceeds should be applied, would the common-law rule as to debts and stockholders prevail? Could they or not be collected? At common law they could not. But here the common-law rule was repealed. But who is to take when collected? The previous law of course pointed this out—the creditors first, the stockholders next. Could you cut out the stockholders here because their rights were not expressly reserved? If so, you cut out the creditors also, because they are not expressly reserved.

According to the opposite argument, they would be both cut out. They would say the common-law rule was modified only; that is, a trustee was only appointed; but as the rights of creditors were not saved expressly, this part of the common law was unrepealed, and therefore the money, when collected, would belong to the debtors. Now, if this could not apply in the supposed case, how can it in the case at bar? Here the legislature say the debts shall not be extinguished, but that the legal title shall be vested in a trustee, and authority is given to him to collect. They then say he shall sue for all debts, and shall sell all property, "and the proceeds of the debts, when collected, and the property, when sold, to apply, as hereafter directed by law, to the payment of the debts of the bank, &c."

Now, it has been contended, and has been so decided by the court, that, "as the trustee was directed to apply it to the debts as hereafter directed by law, and as there was no direction to pay the surplus to stockholders, that it is a modification of the common-law rule, and that only so much was to be collected as would pay the debts;" and, consequently, all other rights are excluded. This is the construction put on it by the court. And suppose this to be the true construction, (which we most respectfully but earnestly deny,) then the act is manifestly unconstitutional and void, so far as the rights of stockholders are concerned. If the legislature had the right to say the debts should not be extinguished, but should be collected only to pay bond creditors, or note holders, it follows that the same construction would cut out other creditors.

Now, we hold that the extinguishment or non-extinguishment of an entire debt is an entirety. A note or debt must either exist or not. If it exist, and there is a person in whom the right is vested, it can be collected. The common law "extinguished all debts." The legislature could entirely repeal or modify this rule. They might repeal it and say debts should not be extinguished; this would save all, and the proceeds would belong to those who were entitled to them, or they

might modify it, and say all bond debts or mortgage debts should be saved. This would save this class, and no other; but they cannot say a mortgage debt shall be saved from extinguishment and may be collected, so far only as to save one class of creditors named in a mortgage, and to cut out a second class. They cannot save a debt, and authorize its recovery, and give away its proceeds when recovered. They cannot say we save only a part of an entire debt from extinguishment; the whole of any one entire debt must be saved, or none of it. The moment the whole debt was saved they could not divest such rights as were attached to it. In other words: Two men have an interest in a debt; A is to be first, B second, if any is left. The legislature say, this debt shall not die with its creditor, nor shall the makers be released from payment, but a trustee shall be appointed to collect it and pay the proceeds to A, and the surplus, if any, B shall not have. This is the precise case before the court. By the contract of subscription, and the law arising out of it, upon the winding up of the affairs of the corporation, the stockholders are entitled to the surplus. If the legislature says the funds out of which this surplus is to be paid shall be saved, but they shall not have it, the latter part of the law is void; and they do say it shall be saved when they say its debts shall not be extinguished, &c.

The very quotations which *is* quoted by the court at page 15 prove this. The court there quote from Nevit's case, "that if the court were to apply the assets to any other case than the payment of the debts of the corporation, it would transcend its constitutional limits."

Why, because the debt being saved, and the existing law giving it to creditors, in the first instance they are entitled to it, and the legislature cannot give it to others. This principle decides the case for us; for the same law which gives it to the creditors first, also gives it, after their claims are satisfied, to the stockholders. "If they could not keep it from the creditors who were first entitled, on what principle can it be kept from the stockholders who are next entitled?" The same principle was applied in Chambers' case.

Now, if the legislature could save the debt from extinguishment, but could not, as the court admit, by so doing take away the right of creditors, by what principle can the legislature take away the right of stockholders, after the creditors are paid? The right of both is identically the same, only one is postponed until the other is satisfied.

The old court, in the cases of Chambers and Nevit, when they were speaking of it as a fund for payment of creditors, did not mean that after they were paid it was not a trust for stockholders. The case of creditors was only before them, and they show, in the same opinion, that the same rule which made it a trust for creditors also made it a trust for stockholders after their debts were paid. (See)

I ask this question to be answered—if a right fixed by law cannot in such case be taken from a creditor, how can it be taken from a stockholder? If a deed of trust gives a right to one class of creditors first, and then to another class, after the first is paid, the legislature cannot

take away the right of either; if it cannot take away the right of the first class, it cannot of the second. The case in 1 Maine, 79, is decisive.

But 3d. We think the court placed a wrong construction on the act of 1843.

Because stockholders are not mentioned, the court thinks they were intended to be excluded. By no means. When the debts were all saved, when a trustee was appointed, the legal right vested in him. By the law, as we have clearly shown in our briefs, if the debts are not extinguished, the creditors must first be paid, and the surplus to the stockholders. Now, the debts were not extinguished at law, because, in express terms, they all are saved. Now, the mere fact that the legislature directed the proceeds to be paid to creditors does not take away a right which existed to the surplus, if any. It only amounts to this: that if there was any surplus over and above what was necessary to pay debts, the legislature left that where the law had placed it. And if the debts were not extinguished, the law vested it in the stockholders after debts paid. This seems to us the only clear construction of the statute. No express provision was necessary to save rights of creditors or stockholders; all that was necessary was to save the fund from extinction; then, existing rights, according to their priority, attached. This was done. All, without exception, were saved.

The court say they followed the previous adjudications of the court in Chambers and Nevit's cases. These cases decided that the fund was a trust for creditors; true, but did these cases decide or intimate that after payment of debts, there was not a trust for stockholders? No such dictum can be found. On the contrary, *were* stockholders were thought of the judge included them.

There was no decision of the precise point in those cases. But the principle of those cases both manifestly decide in favor of stockholders to the surplus. Creditors were only before the court in these cases, therefore general expressions must, according to settled law, be only applied to them. Both the judges who decided these cases applied them to stockholders also.

It is not necessary to examine the doctrine of trusts. If our views are right, the moment a trustee was appointed and the debts saved, the fund in his hands was a trust to pay, first, the creditors, and the surplus for the stockholders. The right of the latter resulted from the fact that the debts were all, by the express, clear and manifest words of the act, saved from extinguishment.

G. S. YERGER.

THE STATE OF MISSISSIPPI,
High court of errors and appeals.

I, Caswell R. Clifton, clerk of said court, do hereby certify that the foregoing pages contain a full, true and perfect copy of the petition for a re-argument of the cause therein stated, filed in my office on the 20th day of August, A. D. 1852, together with schedule A A, referred to therein; also a true copy of the argument of counsel in support